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6 MAY 1977

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MEMORANDUM FOR: [REDACTED]
Assistant to the DDCI

VIA: Deputy Director for Administration

FROM: James H. McDonald
Director of Logistics

SUBJECT: Agency-Unique Devices

1. Action Requested: None; for information only.
This memorandum responds to questions posed concerning the Agency's ability to protect Agency-unique devices or sensitive items from unauthorized distribution or disclosure.

2. Background:

Question 1. If the charge were made that the Agency has inadequate procedures to prevent the outside distribution of Agency-unique devices or sensitive items for which we contract in the private sector, how would we respond?

Answer: (a) Items which may be categorized as Agency-unique or sensitive are normally procured under terms of a classified Government contract. Prior to the award of a classified contract, a contractor is required to execute a "Contractor's Secrecy and Security Agreement", (Att I). The contractor is also required to adhere to this Agency's security standards as set forth in "Security Requirements for Contractors", (Att II). Both of the aforementioned documents are incorporated by reference in any contract awarded by this Agency (Att. III, page 10, Article 23).

(b) The aforementioned documents all require protection of classified information either received or developed under an Agency contract.

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Further, every Agency contract includes a NON PUBLICITY provision which prohibits a contractor from using any aspect of its contract or contractual relationship for publicity or advertisement purposes (see Att. III, page 10, Article 24). It is our belief that the procedures set forth above are indeed adequate to protect classified matters, provided the contractors we deal with maintain standards of integrity and good faith.

(c) A distinguishable problem arises where a classified contract is awarded for the development or follow-on production of an item which is Agency-unique or sensitive, but because of operational constraints, the item is not classified. Such items are generally to be employed by agents overseas and the possibility of loss is always present. Examples of items falling within this category are

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25X1A In such cases, the security requirements and NON PUBLICITY provision prevent a contractor from disclosing the Agency's association with the item. However, there is currently no substantive legal or contractual basis which constrains the contractor from manufacturing and selling the item(s) to others. This matter is currently under review by this Office.

Question 2: Should the Agency attempt to restrict the ability of its contractors to provide Agency-unique devices or sensitive items to parties outside the Agency?

Answer: As stated in paragraph c above, this matter is presently under discussion. Some of the problems we are facing are: withdrawal of certain contractors who are unwilling to accept restrictions on their ability to market unclassified items, a determination of the possibility that such a restriction may raise an allegation that the Agency is guilty of restraint of trade; the cost impact of classifying all items determined to be Agency-unique or sensitive, the practical impact of employing classified items in Agency operations.

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Question 3: How should the Agency respond when a contractor asks us to comment on a sale of Agency-unique devices or sensitive items to a private individual? A former Agency employee?

Answer: (a) The whole tenor of our relationship with those contractors who are developing and manufacturing Agency-unique or sensitive items is one of confidentiality and trust. Our response to such an inquiry should obviously be predicated on a determination of who the individual is, whom is he representing, is he in a position to help or harm the Agency, how did he become aware of the item, and other related questions. Only after developing such data should a decision be made concerning the appropriateness of selling the item in question.

(b) In the case of a former Agency employee, the same approach set forth above should be used. Additionally, questions concerning conflict of interest must also be addressed.

3. Staff Position: Security Staff/OL has been consulted concerning the questions posed and concurs in the answers as stated.

Signed: James H. McDonald

James H. McDonald

Atts

cc: DD/A
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